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14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN FRANCISCO DIVISION  
17  
18 WILLIAMS-SONOMA, INC.,  
19 Plaintiff,  
20 v.  
21 AMAZON.COM, INC.,  
22 Defendant.  
23

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12 Attorneys for Defendant Amazon.com, Inc.

13 Case No.: 18-cv-07548-EDL

14 **FURTHER JOINT UPDATE ON  
PROPOSED CASE SCHEDULE**

15 Complaint Filed: December 14, 2018

16 Judge: Honorable Elizabeth D. Laporte

1 Plaintiff Williams-Sonoma, Inc. (“WSI”) and Defendant Amazon.com, Inc. (“Amazon”)  
 2 (collectively, “the Parties”), by and through undersigned counsel, jointly submit an update  
 3 regarding the case schedule.

4 WHEREAS during the May 7, 2019 Initial Case Management Conference the Court  
 5 proposed a summary judgment hearing date of June 16, 2020 and a trial date of September 14,  
 6 2020 and requested that the Parties submit a joint proposed case schedule by May 10, 2019;

7 WHEREAS the Parties conferred and exchanged alternative schedules that agreed on the  
 8 following dates, which the parties submitted to the Court on May 10, 2019:

<b>Event</b>	<b>Dates</b>
Rule 26(a)(1) disclosures	April 30, 2019
Initial CMC	May 7, 2019
Last Day to Amend Complaint	June 3, 2019
Fact Discovery Cutoff	February 10, 2020
MSJ Hearing	June 16, 2020
Pretrial Conference	August 25, 2020
Trial Date	September 14, 2020

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 16 WHEREAS the Parties requested until June 24, 2019 to provide an update on the  
 17 remaining dates so that they have additional time to confer once they have a better idea of the  
 18 scope of claims and defenses in the case;

19 WHEREAS on May 15, 2019, the Court entered a case management and pretrial order  
 20 adopting the parties’ agreed upon dates, setting certain additional dates, and ordering the parties  
 21 to file joint proposals for a summary judgment briefing schedule, expert discovery deadlines, a  
 22 deadline to complete alternative dispute resolution (“ADR”), and an election of the type of ADR  
 23 by June 24, 2019;

24 WHEREAS the Parties have met and conferred on these additional dates and topics;  
 25 NOW, THEREFORE, the Parties respectfully submit the below update:  
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1     **1. SUMMARY JUDGMENT BRIEFING:**

2         The parties met and conferred regarding summary judgment briefing and agree that they  
 3 would prefer to follow the ordinary briefing schedule provided for in the Civil Local Rules and  
 4 file separate motions with three briefs each. The parties did not agree on an approach involving  
 5 cross-motions and four briefs.

6         ***Plaintiff's Position.*** With the understanding that the Court prefers an approach involving  
 7 cross-motions and four briefs, Plaintiff urges the Court to require Defendant to file first.  
 8 Defendant is likely to seek summary judgment on a much larger number of issues than Plaintiff.  
 9 The Court and the parties will have the greatest amount of time to consider the issues if the party  
 10 presenting the larger motion goes first. Defendant agrees it is likely to seek summary judgment  
 11 on a greater number of issues, but refuses to go first unless Plaintiff stipulates in advance to limit  
 12 the scope of its filing. Plaintiff cannot in good conscience make such an agreement when the  
 13 parties have yet to engage in any discovery. Defendant's argument that Plaintiff should go first  
 14 appears to proceed from the premise that requiring Plaintiff to go first in summary judgment will  
 15 clarify the nature of the dispute for trial. This is exactly backwards. It is the issues upon which  
 16 Plaintiff does *not* move for summary judgment, and upon which it opposes summary judgment  
 17 from Defendant, that it expects to go to trial. Only by requiring Defendant to go first will the  
 18 Court achieve the effect for which Defendant argues. Accordingly, if the Court orders a four-  
 19 brief approach, then Plaintiff respectfully requests that Defendant be required to go first.

20         ***Defendant's Position.*** If the Court orders four rounds of summary judgment briefing,  
 21 Plaintiff WSI should be required to move for summary judgment first, before Amazon does, as set  
 22 forth in Amazon's proposed schedule. As Plaintiff, it is appropriate that WSI go forward first,  
 23 and that Defendant respond; this will avoid needless briefing on issues as to which WSI chooses  
 24 not to proceed following discovery. Amazon does not know whether Amazon or WSI will seek  
 25 summary judgment on a greater number of issues, and does not have enough information at this  
 26 stage of the case to make an assessment of the likelihoods. WSI says it thinks it will move for  
 27 summary judgment on fewer issues than Amazon, but is unwilling to back up that speculation  
 28 with any commitment at all. Requiring WSI to move for summary judgment first will clarify the

1 legal and factual issues WSI raises, focus the parties' disputes, and narrow the issues for trial. In  
 2 addition, requiring WSI to move first still ensures that WSI has a full opportunity to respond to  
 3 Amazon's motion for summary judgment and its opposition to WSI's motion for summary  
 4 judgment.

5 **2. FURTHER CASE SCHEDULE:**

6 *Joint Proposal for Three-Round Schedule:*

7 <b>Event</b>	8 <b>Date</b>
9 Fact Discovery Cutoff	February 10, 2020
10 Initial Expert Reports (Party Bearing Burden of Proof)	February 17, 2020
11 Rebuttal Expert Reports	March 18, 2020
12 Expert Discovery Cutoff	April 8, 2020
13 MSJ	April 21, 2020
14 Opp to MSJ (also any <i>Daubert</i> challenges to MSJ evidence)	May 12, 2020
15 Reply to MSJ (also Opp to any <i>Daubert</i> challenges)	May 26, 2020
16 MSJ Hearing	June 16, 2020
17 Pretrial Conference	August 25, 2020
18 Trial Date	September 14, 2020

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1                   ***Plaintiff's Proposal for Four-Round Schedule:***

2 <b>Event</b>	3 <b>Date</b>
4                   Fact Discovery Cutoff	February 10, 2020
5                   Initial Expert Reports (Party Bearing Burden of Proof)	February 17, 2020
6                   Rebuttal Expert Reports	March 18, 2020
7                   Expert Discovery Cutoff	April 1, 2020
8                   Defendant's MSJ	April 10, 2020
9                   Plaintiff's Opp to MSJ and Cross-Motion (also any <i>Daubert</i> challenges to Defendant's MSJ evidence)	May 1, 2020
10                  Defendant's Opposition to Plaintiff's MSJ and Reply to MSJ (also any <i>Daubert</i> challenges to Plaintiff's evidence and Opposition to Plaintiff's <i>Daubert</i> )	May 15, 2020
11                  Plaintiff's Reply ISO MSJ (and Opp to any <i>Daubert</i> )	May 26, 2020
12                  MSJ Hearing	June 16, 2020
13                  Pretrial Conference	August 25, 2020
14                  Trial Date	September 14, 2020

15                   ***Defendant's Proposal for Four-Round Schedule:***

16 <b>Event</b>	17 <b>Date</b>
18                  Fact Discovery Cutoff	February 10, 2020
19                  Exchange of Initial Expert Reports	February 17, 2020
20                  Exchange of Rebuttal Expert Reports	March 18, 2020
21                  Expert Discovery Cutoff	April 8, 2020
22                  Plaintiff's MSJ	April 10, 2020
23                  Defendant's Opp to MSJ and Cross-Motion (also any <i>Daubert</i> challenges to Defendant's MSJ evidence)	May 1, 2020
24                  Plaintiff's Opposition to Defendant's MSJ and Reply to MSJ (also any <i>Daubert</i> challenges to Plaintiff's evidence and Opposition to Plaintiff's <i>Daubert</i> )	May 15, 2020
25                  Defendant's Reply ISO MSJ (and Opp to any <i>Daubert</i> )	May 22, 2020
26                  MSJ Hearing	June 16, 2020
27                  Pretrial Conference	August 25, 2020
28                  Trial Date	September 14, 2020

### **3. ADR ELECTION:**

***Plaintiff's Position.*** Plaintiff continues to believe that a settlement conference with a Magistrate Judge is most likely to produce a resolution of this matter. Plaintiff made a comprehensive demand for settlement in early April and has not received a response. This is a case where the judicial robes are likely to be necessary to produce a meeting of persons with the requisite authority and willingness to bargain.

***Defendant’s Position.*** There is no need for the intervention of a magistrate judge to conduct ADR in this matter; this is a business dispute in which a private mediator’s services will be appropriate to the task. There is no need for a dispute between these parties to take up space on the busy settlement calendar of one of the district’s magistrate judges.

Amazon does not believe that discussion of the parties' settlement communications is necessary or appropriate in this filing.

Amazon is willing to attend a private mediation with persons with appropriate authority and willingness to bargain—no robes necessary.

Dated: June 24, 2019

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: \_\_\_\_\_ /s/ *Annette L. Hurst*  
ANNETTE L. HURST

Attorneys for Plaintiff Williams-Sonoma, Inc.

Dated: June 24, 2019

DURIE TANGRI LLP

By: \_\_\_\_\_ /s/ Joseph C. Gratz  
JOSEPH C. GRATZ

Attorneys for Defendant Amazon.com, Inc.

1       *I, Annette Hurst, am the ECF user whose ID and password are being used to file this Joint  
2 Update on Case Schedule. In compliance with General Order 45, X.B., I hereby attest that Joseph  
2 C. Gratz has concurred in this filing.*

3  
4 Dated: June 24, 2019

ANNETTE L. HURST

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6 By: \_\_\_\_\_ /s/ *Annette L. Hurst*  
ANNETTE L. HURST

7       Attorneys for Plaintiff Williams-Sonoma Inc.  
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1                   **CERTIFICATE OF SERVICE**

2       I, Annette L. Hurst, certify that on the 24<sup>th</sup> of June 2019, I caused the foregoing document  
3       to be electronically transmitted to the Clerk of the Court using the ECF System for filing and  
4       transmittal of a Notice of Electronic Filing to the ECF registrants and attorneys of record in this  
5       case.

6                   \_\_\_\_\_  
7                   */s/ Annette L. Hurst* \_\_\_\_\_  
8                   ANNETTE L. HURST

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